STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0782

In re the Matter of:
Joseph Loren Conner, petitioner,
Respondent,

vs.

Jakklyn Marie Netland,
Appellant.

Filed February 20, 2018
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-FA-09-1849

Gary A. Debele, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent)

Jakklyn Marie Netland, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant-mother challenges two district court orders, arguing that the district court erred when it (1) decided respondent-father's countermotions because they were not properly before the court, (2) dismissed as untimely her challenge to a decision made by the parties' parenting consultant, (3) deemed her motion for amended findings to be a

motion to reconsider, and (4) limited her ability to present evidence and arguments at a motion hearing. We affirm.

FACTS

Appellant-mother Jakklyn Marie Netland and respondent-father Joseph Loren Conner have one joint minor child who was born in November 2007. In December 2010, the parties, who were never married, were granted joint legal and joint physical custody of the child with a parenting-time schedule that gradually increased father's parenting time until the parties had a 5-2-2-5 parenting-time schedule. The order set a 7-7 summertime parenting-time schedule beginning in 2016. The order also appointed, by stipulation of the parties, a parenting consultant (PC) to assist the parties in settling disputes outside of court. On February 2, 2011, the terms of the selected PC's contract were incorporated into a court order.

On June 28, 2016, mother filed a motion to modify child support. On August 8, she filed three more motions requesting that the district court (1) sanction father for sharing the parties' "sealed court file" with a psychotherapist who evaluated their son, (2) remove and replace the PC, and (3) overrule a decision made by the PC on July 13, 2016 (the July PC decision) that "[n]either parent will attend an activity for [the child] which occurs during the other parent's parenting time, and which has been paid for by that other parent." On August 12, father filed countermotions requesting a year-round 7-7 parenting-time schedule, rather than a school-year reversion to the 2-5-5-2 parenting-time schedule, and seeking a court order mandating that the child resume psychotherapy.

In an August 12 email responding to a request from the PC that mother provide outstanding information related to disagreements between the parties, mother stated that she cannot afford the PC's services and that the PC should not address the parties' disagreements until after their August 22 motion hearing. The PC agreed not to address any pending matters until after the parties' motions were heard by the court.

On August 17, father filed a responsive motion in district court, requesting that the court deny mother's motions to modify child support, to remove the PC, and to impose sanctions. Father also requested that mother's motion to overturn the July PC decision be dismissed as untimely because mother failed to object to the PC's decision within 14 days pursuant to the February 2, 2011 order, or that it be denied on its merits.

On August 18, mother filed additional pleadings in support of her motions, but the district court determined that they were not timely served and filed under Minn. R. Gen. Pract. 303(c) and did not consider them.[1] On August 22, mother filed an affidavit opposing father's countermotions, but the district court determined that it was also not timely served and filed under Minn. R. Gen. Pract. 303(c) and did not consider it.

Mother's motions and father's countermotions were heard at the August 22, 2016 motion hearing.[2] Mother was given an opportunity to discuss her motions and began with

[1] Minn. R. Gen. Pract. 303(c) provides that: "The Rules establish deadlines for responding to motions. All responsive pleadings shall be served and filed with the court administrator no later than five days prior to the scheduled hearing. The court may, in its discretion, disregard any responsive pleadings served or filed with the court administrator less than five days prior to such hearing in ruling on the motion or matter in question."

[2] A referee presided over the parties' hearings, and a district court judge approved the resultant orders.

her motion to overturn the July PC decision. Mother restated arguments and information presented in her pleadings. The district court noted that the issues mother raised would be reviewed and that mother filed "plenty of information" related to each of her motions. The court then gave father an opportunity to respond to mother's motions.[3]

Father addressed mother's motion to modify child support, her motion for sanctions, and her motion to remove and replace the PC. Father also addressed mother's challenge to the July PC decision arguing that not only was the challenge untimely, but that the decision was appropriate and should be upheld substantively. Father also discussed his countermotions, noting that he would be agreeable to replacing the PC, but that he believed a timely decision was necessary regarding the parenting-time schedule and the child's psychotherapy. Father asserted that, under normal circumstances, he would wait for the PC's decision on the matters addressed in his countermotions, but that mother had already asked the PC not to make decisions and was also attempting to remove the PC. The district court indicated that it would decide the parenting-time and psychotherapy issues, and mother did not object.

Mother indicated that she wanted an opportunity to rebut father's claims and alleged that father made "several unfair and untrue allegations." The parties then agreed to replace the PC and negotiated a replacement procedure. The district court indicated that while the parties selected a new PC, the remaining issues would be taken under advisement by the

[3] Throughout the relevant proceedings, mother was pro se and father was represented by counsel.

court and that the court would issue a temporary order regarding the parenting-time schedule for the parties to follow until a permanent order was filed. Mother did not object.

The district court also ordered on the record that the child resume psychotherapy. Mother stated that she was opposed to this and claimed that she did not have an opportunity to be heard on the matter. The district court indicated that the hearing was over because the court had other commitments. Mother requested a continuance so she could argue the issue at a later date. The court noted that mother "filed volumes of pleadings" which would be thoroughly reviewed again before an order was filed, but that the temporary order was for the child to resume psychotherapy. Mother requested leave to file more information and the court explained that mother could attempt to file additional information at court administration, but that it would not be accepted in the courtroom and would be considered only if it was timely served and filed. *See* Minn. R. Gen. Pract. 303(c).

On August 26, after these motions and countermotions were under advisement, mother wrote a letter to the district court requesting to withdraw her motions to modify child support, to remove the PC, and for sanctions against father. Mother indicated that she still intended to pursue her motion to overturn the July PC decision, and that she believed that her motion was timely.

On September 2, the district court ordered that the parties temporarily continue the summertime 7-7 parenting-time schedule. The court found that this would provide stability and continuity for the child while the parties' motions were pending. On September 6, the court filed an amended temporary order adding a provision ordering that the child resume psychotherapy. On September 6 and again on September 14, mother requested permission

to file a motion to reconsider the September 2 temporary order pursuant to Minn. R. Gen. Pract. 115.11.[4] On October 10, the district court denied mother's request to file a motion to reconsider. The court noted that mother's request only raised issues and arguments that were addressed at the August 22 motion hearing and did not show compelling circumstances that warranted reconsideration.

On November 18, the district court filed an order addressing the parties' various motions. The court ordered that the 7-7 parenting-time schedule continue on a permanent basis. The court also dismissed mother's motion to modify child support, dismissed with prejudice her motion for sanctions, denied her motion to remove the PC, and denied her motion to vacate the July PC decision because mother's motion was untimely.

Mother appeals.

D E C I S I O N

I. Father's countermotions for modification of the parenting-time schedule and for the child to resume psychotherapy were properly before the district court.

The portion of the PC's contract, which was incorporated into the district court's February 2, 2011 order, that is most relevant to this appeal states:

> The parties agree to abide by all determinations that are made by the [PC] within the scope of authority per this Order, unless modified by subsequent court order. If one or both of the parties disagree with the decision of the [PC], that party must obtain a court hearing date to contest the [PC's] decision. The party in disagreement with the decision of the [PC] must

[4] "Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be served on all opposing counsel and self-represented litigants." Minn. R. Gen. Pract. 115.11.

> provide written notice of the hearing date to the other parent and the [PC] within fourteen (14) days of receiving the written decision from the [PC]. The party shall be obligated to file and serve pleadings on the motion within the time frame of the law and procedural rules governing Family Court.

The parties agreed to utilize the PC to attempt to settle parenting disputes outside of court. "[S]tipulated judgments are generally deemed binding contracts." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007). Minnesota statutes do not use the term "parenting consultant," but "[i]n practice, the term refers to a creature of contract or of an agreement of the parties which is generally incorporated into . . . a district court's custody ruling." *Id.* The district court retains authority over parenting issues, irrespective of the appointment of a PC. *See id*. (noting that contracts are not construed to reach harsh or absurd results and that "there can be legitimate reasons to remove or replace a parenting consultant"); *see also* Minn. Stat. § 518.175 (2016) (recognizing district court's continuing authority to decide and modify parenting time); Minn. Stat. § 518.18 (2016) (authorizing district court to modify custody orders or parenting plans); Minn. R. Gen. Pract. 114.04(b) (permitting court, at its discretion, to order parties to participate in alternative dispute resolution). Furthermore, the welfare and best interests of the child take precedence over any stipulation by the parents. *Sydnes v. Sydnes*, 388 N.W.2d 3, 7 (Minn. App. 1986).

Mother argues, without supporting legal analysis or argument, that the district court's failure to require father to follow the stipulated process before it addressed his countermotions violated her due-process rights. Mother also argues that the district court erred by modifying the parties' parenting-time schedule and by ordering the child to resume psychotherapy without first requiring father to follow the stipulated process set out in the

provision above. Mother asserts that, due to the parties' stipulation, appointment of the PC divested the district court of authority or subject-matter jurisdiction over parenting issues and therefore over father's countermotions. These arguments are not supported by law and we reject them.

Mother also asserts, without providing supporting legal analysis, that the district court's decision to grant father's countermotions was not in the child's best interests. A district court has broad discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). "A district court abuses [its] discretion [regarding parenting time] by making findings unsupported by the evidence or improperly applying the law." *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)). A district court's findings of fact, on which a parenting-time decision is based, will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978). "If modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b) (2016).

This issue need not be addressed due to mother's failure to adequately brief her argument. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (issues not supported by analysis or argument are waived and need not be considered unless

prejudicial error is obvious on mere inspection). A review of the record, however, shows that the district court's findings of fact were not clearly erroneous, and that it did not misapply the law. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings" and that an appellate court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings"); *Cook v. Arimitsu*, ___ N.W.2d ___, 2018 WL 492638, at *6 n.3 (Minn. App. Jan. 22, 2018) (applying this aspect of *Wilson* in a family law appeal). The district court did not abuse its discretion when it determined that the modified parenting-time schedule and resuming psychotherapy was in the best interests of the child.

II. The district court did not err by dismissing mother's challenge to the July PC decision.

Mother argues that her challenge to the July PC decision should not have been dismissed as untimely because she complied with the stipulated process set out in the February 2, 2011 order, and that father's assertion to the contrary was "fraudulent." Mother also argues that dismissing her motion was not in the child's best interests, which should be the district court's paramount concern, and that all decisions by the PC should be able to be challenged in district court regardless of compliance with the stipulated process.

Here, the district court found that mother failed to comply with the procedure set out in the February 2 order by failing to obtain a hearing date and to notify father of that date in writing within 14 days of receipt of the July PC decision. Mother failed to comply

with that procedure at a time when the PC's appointment was not being challenged in district court. These findings are supported by the record and are not clearly erroneous. *See Griffin*, 267 N.W.2d at 735. Although the district court retained authority over parenting issues and could have chosen to address mother's challenge on its merits, the court also had the discretion to decline to address it. *See* Minn. R. Gen. Pract. 114.04(b) (noting that in its discretion the district court may order the parties to utilize alternative dispute resolution). On this record, the district court's decision to dismiss mother's untimely motion was not an abuse of discretion.[5] *See Hagen*, 783 N.W.2d at 215 ("A district court abuses [its] discretion by making findings unsupported by the evidence or improperly applying the law.").

III. The district court did not err when it deemed mother's "motion for amended findings" to be an improper motion to reconsider.

On December 19, 2016, mother filed a motion to amend the November 18, 2016 order's findings. The motion was argued at a January 25, 2017 hearing, and the district court filed an April 21 order dismissing mother's motion as an improperly filed motion to reconsider. In her motion, mother requested that the court's findings be amended and that its order granting father's countermotions be reversed because father committed fraud upon the court. Mother characterized father's opinion that the child needs psychotherapy as a "material misrepresentation" and characterized evidence that she failed to properly serve and file before the August 22, 2016 motion hearing as "newly discovered." On appeal,

[5] Mother argues that it is inconsistent to hold her to the terms of the February 2, 2011 order and not to hold father to those terms as well, but it is important to note that mother's attempt to remove the PC interfered with father's ability to utilize the PC's services.

mother asserts that the district court erred when it deemed her motion for amended findings to be a motion to reconsider.

A review of the record reveals that, as the district court found, mother did not make arguments for amended findings in her motion. Instead, mother attempted to present evidence that was available to her before August 22, 2016, in order to re-litigate the motions argued at the August 22 hearing. Based on the substance of mother's motion, the district court did not err when it concluded that mother was attempting to pursue a motion to reconsider under Minn. R. Gen. Pract. 115.11. Mother failed to request permission to file such a motion as required by the rule, and the district court did not err when it denied the motion on those grounds.

IV. Mother's due-process and equal-protection rights were not violated when the district court limited her time to argue and present evidence at the August 22, 2016 motion hearing, and denied her request for a continuance.

Mother argues that she was not allowed adequate time to rebut father's arguments or to argue her motion for sanctions at the August 22, 2016 motion hearing. Mother asserts that father received a "default judgment" which is not in the best interests of the child. She also argues that because her time was limited at the hearing, and because she was denied a continuance of the hearing, her due-process and equal-protection rights were violated. Other than citing to *Hunter v. Zenith Dredge Co.*, 220 Minn. 318, 326, 19 N.W.2d 795, 799 (1945), for the principle that "[d]ue process requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case," mother does not provide any legal analysis to support her position. Because mother failed to

adequately brief this issue, we need not address it. *See Modern Recycling, Inc.*, 558 N.W.2d at 772.

However, a review of the August 22, 2016 motion hearing transcript shows that mother was given adequate time to make an oral presentation of her arguments, and that the district court reviewed mother's extensive pleadings. Mother was prevented from submitting new evidence at the hearing, but she failed to file and serve the documents in question in accordance with Minn. R. Gen. Pract. 303(c). Here, mother had an opportunity to be heard, and her due-process and equal-protection rights were not violated by the district court limiting her time to argue.

Affirmed.